



## INTERIOR BOARD OF INDIAN APPEALS

Michael L. Marvin v. Acting Sacramento Area Director, Bureau of Indian Affairs

32 IBIA 64 (02/19/1998)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

MICHAEL L. MARVIN,  
Appellant

v.

ACTING SACRAMENTO AREA DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Affirming Decision

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: Docket No. IBIA 97-63-A

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: February 19, 1998

Appellant Michael L. Marvin seeks review of a November 5, 1996, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), denying Appellant's request to mortgage trust real property of which Appellant is the beneficial owner. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

On April 15, 1996, Appellant wrote to the Central California Agency, BIA (Agency), asking for approval of mortgages of three parcels of trust real property. Appellant stated that the purpose of the mortgages was to develop homesites on the parcels for his family.

By memorandum dated July 26, 1996, the Agency Superintendent forwarded the request to the Area Director with a recommendation that the mortgages be approved. The memorandum indicated that Appellant "propose[d] to build three homes on the mortgaged parcels. One of these houses will be [Appellant's] primary residence and the other homes are anticipated to provide lease income."

The Area Director asked for additional information relating to Appellant's credit history and access to the trust parcels, which are apparently landlocked. He issued his decision on November 5, 1996, noting that Appellant's credit history was not good, and that numerous comments had been added to the credit report; that Appellant had previously lost several other trust parcels to foreclosure; and that the information concerning access did not show that there was an easement or easements allowing access to all of the parcels. The Area Director denied Appellant's request to mortgage the three parcels of trust property.

Appellant appealed to the Board and filed an Opening Brief. No other briefs were filed.

On appeal, Appellant presents additional information concerning his credit history and access to the parcels. He argues that he annotated the credit history presented to the Area Director because there were errors on it and it therefore did not show the improvement in his credit rating. He contends that the poor credit history which the Area Director reviewed was due to bad investments, and asserts that the improvement in his credit history shown in a new credit report should weigh in favor of approving the

mortgage. He also presents additional information and maps concerning access to the parcels, and argues that it is now clear that there is access to each of the parcels.

Appellant admits that he previously lost trust property to foreclosure, but asks if that fact precludes him from ever again mortgaging his property. He notes that he owns an inherited fractional interest in 6 acres of trust land, and 77.75 acres of trust land which he purchased in 1985.

Appellant further asks that if the mortgage of three trust parcels cannot be approved, then the mortgage of two, or even one, parcel be considered. He states that he has family obligations for which he needs funds.

As the Board noted in Noriega v. Acting Anadarko Area Director, 27 IBIA 157, 158 (1995), a decision as to whether or not to approve a mortgage of trust property is committed to BIA's discretion. The Board's role in reviewing BIA discretionary decisions is limited. The Board does not substitute its judgment for BIA's, but instead reviews the BIA decision to ensure that all legal prerequisites to the exercise of discretion were followed.

The BIA's trust responsibility is to Appellant as the owner of trust land. That responsibility is the same whether the land was inherited or purchased, as long as the land is held in trust status. Although the result may appear harsh to Appellant, BIA's first responsibility as a trustee is to ensure that Appellant's own future is not jeopardized. Appellant's previous loss of trust lands through foreclosure, combined with the facts that the credit history presented to the Area Director was still poor and that there were questions about access to the parcels, which affected the viability of the proposed project, was an adequate basis for BIA to decline to approve another mortgage of his trust lands. Therefore, the Board affirms the Area Director's declination of Appellant's request to mortgage additional trust lands.

Assuming arguendo that the situation has now changed, and that Appellant can show an improved credit history and clear access to all three parcels, Appellant may ask the Area Director to consider a new mortgage request. The burden will be on Appellant, however, to show that he is unlikely to again lose trust property to foreclosure.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Sacramento Area Director's November 5, 1996, decision is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge